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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/726,432
Filing Date: December 03, 2003
Appellant(s): GULER ET AL.

Mark E. Scott
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 19, 2008 appealing from the Office action mailed August 13, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Pending appeal of application 09/858,251, containing a common inventor, the same assignee, and the publication (US 2002/0174052) of which is the ground of rejection to be reviewed.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0174052

Guler

11/2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-5, 8-11, 13, 15-17 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Guler (US 2002/0174052).

Referring to claim 3. Guler discloses a method comprising:

- Providing information regarding an online auction to a computer system (abstract); and
- Predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type (figure 4 and paragraph 63);
- Allowing an auction end-user to select a feedback rule to implement from the plurality of potential feedback rules based on the predicted auction outcomes (paragraph 38); and
- Implementing a single auction using the feedback rule selected by the end-user (paragraph 68).

Referring to claim 4. Guler further discloses a method wherein predicting comprises modeling an outcome for each of the plurality of potential feedback rules (figure 4 and paragraph 63).

Referring to claim 5. Guler further discloses a method wherein modeling the outcome for each of the plurality of potential feedback rules comprises calculating a statistical distribution of possible outcomes for each of the plurality of potential feedback rules (figure 9 and paragraphs 38 and 63-64).

Referring to claims 8-9. Claims 8-9 contain similar limitations to claims 3-4 and are rejected under the same rationale set forth.

Referring to claim 10. Guler further discloses a system wherein the processor predicts a final outcome for each of the plurality of feedback rules (figure 4 and paragraph 63).

Referring to claims 11, 13, 15-17 and 20. Claims 15-17 and 20 contain similar limitations to claims 3-5 and are rejected under the same rationale set forth above.

Referring to claim 21. Guler further discloses method wherein the predicting further comprises:

- Ranking, by the software program, each of the plurality of potential feedback rules based on the predicted outcomes (figure 10 and paragraph 66); and
- Providing the ranking to the auction end user (paragraph 66).

(10) Response to Argument

Appellant's arguments filed February 19, 2008 have been fully considered but they are not persuasive. Appellant argues that US 2002/0174052 (hereafter known as Guler) does not disclose selection of a feedback rule to be used within a particular bidding model and that Guler is solely directed towards selecting an auction type (e.g. Dutch auction, English auction, first-price-sealed-bid-auction).

The examiner disagrees with the Appellant and submits that bid increments (see paragraph 6 of Guler below) are examples of feedback rules within the selected auction format. Appellant's specification (paragraph 1) defines a feedback rule as "the set of rules that determine the information revealed to the bidders" and further indicates that "the selection of a proper format for a particular auction is desirable".

Paragraphs 6 and 7 of Guler disclose:

(006) The seller has to make a number of decisions regarding the auction mechanism. This means that the seller typically makes a number of decisions to determine the specific auction procedure for designing and conducting the auction. The auction mechanism typically includes the auction format, the reserve price of the item to be auctioned, entry fees, quantity, timing and duration, lot size and bundling, sequence of lots, bid increments, information disclosure policy, participation rules, and preference/discrimination policy, etc. The auction format indicates the process by which the auction winner(s) and payments are determined. Standard auction formats include Dutch, English, first-price-sealed bid, Vickrey, etc.

(007) The reserve price specifies the minimum or maximum acceptable price, depending on whether the auction is a selling auction or buying auction. If the auction is a selling auction, then the reserve price is the minimum acceptable price. If the auction is a buying auction, the reserve price indicates the maximum acceptable price. The entry fee is the fee a bidder is charged to participate in the auction. The participation rules specify how bidders can participate in the auction. For example, the participation rules can specify that the auction is an invitation only auction. As a further

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example, the participation rules may specify that participation is based on lottery draws.

The examiner therefore submits that the bid increments must inherently be revealed to the bidders to allow an auction to occur. A bidder must possess knowledge of the bid increments to increase their bid. It is impossible to keep these auctions parameters secret as alleged by the Appellant. Furthermore, while it is possible in some auctions to keep the reserve price secret from bidders, Guler defines the reserve price as the price below no bid will be accepted (see paragraph 9 of Guler). The reserve price of Guler is the same as the minimum starting bid of auctions which also would be revealed to bidders. Appellant's further arguments regarding auction characteristics and reserve price optimization (paragraphs 16 and 31-32 of Guler) fail under the same rationale.

Furthermore, Appellant acknowledges that Guler may disclose feedback rules but argues that the feedback rules are merely tied to the selected auction format and are not independently implemented. The examiner disagrees and cites paragraphs 41-43 of Guler. Guler discloses selecting a bidding model (e.g. Dutch, English, first-price-sealed-bid) and then specifying the characteristics of the selected auction.

Appellant further argues that the claims 5, 11, and 15-17 are not anticipated by Guler because Guler does not disclose calculating possible outcomes (emphasis added). The examiner disagrees. Representative claim 5 recites, "modeling an outcome for each of the plurality of potential feedback rules further comprises calculating a statistical distribution of possible outcomes for each of the plurality of

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feedback rules". The examiner notes appellant's specification paragraph 25 indicating an example of an outcome to be the winning bid for a bidding model. Paragraph 38 of Guler discloses calculating a probability distribution of a bidders' willingness to pay and paragraph 37 discloses the outcome of an auction to be determined by bidding behavior (i.e. who pays how much). Therefore, a probability distribution of how much bidders will pay in an auction inherently teaches the outcome (winning bid) based on feedback rules (bid increments and reserve price). The examiner further notes figure 9 and paragraph 63-64 of Guler teaching an outcome prediction model that calculates expected values of an auction by varying the auction parameters.

The examiner submits that the 35 USC 102(b) rejection of independent claims 3, 8, 13, and 20 and their respective dependent claims in view of Guler is proper in view of the rationale set forth above.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jeffrey A. Smith/

Supervisory Patent Examiner, Art Unit 3625

Jason B. Dunham

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May 22, 2008

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